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METHODS OF WORK RELATING TO THE STATE REPORTING PROCESS

Background document prepared by the secretariat

1. The first inter-Committee meeting of the human rights treaty bodies will be held from 26 to 28 June 2002, pursuant to a recommendation of the chairpersons of the human rights treaty bodies during their thirteenth meeting (18-22 June 2001).

2. The present document, which was prepared by the secretariat, constitutes the background document for the inter-Committee meeting on methods of work relating to the State reporting process.

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Annex

FIRST INTER-COMMITTEE MEETING

METHODS OF WORK RELATING TO THE STATE REPORT PROCESS

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The reporting process: Introduction

1. The procedures established by the various treaty bodies to consider reports submitted by States parties contain many similar elements. However, important differences exist that can cause confusion among those States that must report under several treaties and among the non-governmental organizations and other partners of the treaty bodies that wish to follow and contribute to the reporting process.

2. One of the main functions undertaken by each of the treaty bodies is the examination of reports submitted by State parties. The treaty bodies generally follow the same process in considering reports, which consists of the following steps:

(a) Receipt of report by the committee secretariat;

(b) Designation by the committee of a "country rapporteur";

(c) Analysis of the country by the committee, particularly the country rapporteur and secretariat staff assigned to assist him or her;

(d) For committees that hold pre-sessional working groups for the consideration of States parties' reports, formulation and adoption of lists of issues by the working group;

(e) Transmittal of the lists of issues to the State party concerned by the secretariat;

(f) Examination of information submitted by all interested partners, including United Nations agencies, NGOs and others, in pre-sessional working groups, during sessions, or both;

(g) Examination of the State party's report in plenary meeting by the committee, in the presence of a government delegation, with questions and answers;

(h) Adoption of concluding observations or comments by the committee.

3. Although process by which treaty bodies review the reports of States parties is generally similar, some specific conditions are set forth in the respective treaties and the treaty bodies have developed separate sets of rules and practices on many of the same basic issues. The periodicity for the submission of reports is not the same for all the treaties. Most now work on State party reports through pre-sessional working groups, although two do not, and only those that have pre-sessional working groups are able to work with lists of issues. Some actively solicit information from NGOs while others are satisfied with receiving information passively. No two committees structure the dialogue with the State party delegation in the same way. The committees sometimes deal with reactions from Governments whose reports are examined in diametrically opposed ways. The type of information that some Committees release publicly is restricted by others. At the same time, some treaty bodies are developing new ways to ensure that n -reporting States parties do not escape public scrutiny of their human rights records while others have not yet determined how to address this problem.

4. Thus, at many points in the reporting process, a number of discrepancies in the rules and practices of the various treaty bodies are discernible that can complicate the work of those that participate in, contribute to, or otherwise observe the reporting process. The first inter-Committee meeting is being convened to address these issues. The sections that follow outline the approaches of the treaty bodies to a number of aspects of the reporting process, the reasoning behind them, and proposals that have been presented over the years from various sources, including the committees themselves, independent observers of the treaty system and the secretariats that service them. While diverse options are presented under the various sections of the paper, most are not mutually exclusive and several may be complementary.

5. Throughout the present paper, the committees will be referred to by their commonly known acronyms, as follows:

Committee	Acronym	Treaty
Committee on Economic, Social and Cultural Rights	CESCR	International Covenant on Economic, Social and Cultural Rights (ICESCR)
Human Rights Committee	HRC	International Covenant on Civil and Political Rights (ICCPR)
Committee on the Elimination of Racial Discrimination	CERD	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
Committee on the Elimination of Discrimination against Women	CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
Committee against Torture	CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Committee on the Rights of the Child	CRC	Convention on the Rights of the Child

All treaty bodies are serviced by the Office of the High Commissioner for Human Rights in Geneva except CEDAW, which is serviced by the Division for the Advancement of Women in New York.

I. SCHEDULING OF REPORTS

6. The reporting process generally begins with the receipt of a report from a State party. When a report is received, the concerned committee is so informed and the committee schedules it for examination at a future session. It is a general rule that reports are scheduled in chronological order of receipt. CAT and CERD generally adhere to chronological scheduling, as they have no significant backlog of accumulated reports that extends beyond, at most, two sessions in the future. However, all the committees tend to give priority to reports if they are initial reports, if they are submitted by a State party that has not reported in a long time, or if they are submitted by a State party in which there are reportedly serious human rights problems.

CRC, which began only in recent years to receive periodic reports, and CEDAW attempt to schedule a certain proportion of initial and periodic reports at each session. CRC and CESCR try to respect the chronological order of submission.

7. CEDAW also takes into account geographical distribution when scheduling reports to be examined at each session.[1] States parties are invited well ahead of the session at which their report is scheduled and they must confirm their acceptance at least eight months in advance, as the report is considered by the pre-sessional working group held six months prior to the session at which the report will be examined. With regard to States parties with outstanding reports, CEDAW may consider scheduling a review at a future session and suggest to the State party that it submit its reports beforehand.

8. At present, the Committees do not coordinate among themselves regarding the scheduling of reports. Several countries that have appeared before a number of treaty bodies at short intervals in recent years have informally complained that their scheduled appearances were overly burdensome for their human rights personnel. When one State was scheduled to appear before two committees in the autumn of 2002, it requested postponement of the examination of the report by one of the committees to a later session. Similarly, several countries that are members of the Commission on Human Rights have communicated that their limited resources prevent them from appearing before the HRC at its March sessions, when the annual sessions of the Commission take place. Several treaty bodies (CESCR, HRC) have faced last-minute postponements, which left them unable to schedule other reports for that time and consequently leading to waste of valuable meeting time.

9. Improved advance coordination in the scheduling of reports, with a view to rationalizing the spacing of the examination of reports by various treaty bodies or otherwise ensuring that it would not pose serious difficulties for States parties, could significantly enhance the likelihood that States parties will appear as scheduled before the committees. This would be beneficial not only for the committees and the States parties, but also for all partner organizations that contribute information by enabling them to plan better the preparation of their submissions and the dispatch of delegations.

Option 1: Coordinate the scheduling of reports

10. The treaty bodies could use existing forums, such as the annual meeting of chairpersons, to coordinate the scheduling of reports at their future sessions. This would require that the chairpersons be mandated by their respective committees to take such decisions. Those treaty bodies that do not have a backlog of reports, and which therefore may not be able to determine a schedule for sessions a full year in advance, would have at their disposal a consolidated schedule of reports to be examined by the other treaty bodies to consult when determining their own schedules.

11. Alternatively, each treaty body, when determining which reports to examine at its future sessions, could consult the reports scheduled by other treaty bodies.

II. PERIODICITY OF REPORTING/ACCEPTANCE OF COMBINED REPORTS

12. The treaties or the resolution (in the case of CESCR) establishing a reporting obligation on States parties generally stipulate the periodicity of reporting, from two to five years, except in the case of the ICCPR, for which there is no fixed reporting cycle. The treaty bodies have come under increasing strains from the workload created by the growing levels of ratification, coupled with the large number of States parties that do not report or that submit reports long after the date due. As a result, the treaty bodies are attempting to find ways to apply their defined periodicities in flexible ways so as to reduce the burden on themselves as well as on States parties.

13. Three treaty bodies (CERD, CEDAW and CRC) have accepted the principle of accepting multiple reports combined in a single document. In accordance with decision 1 (XXIX), adopted in 1984, CERD accepts an unlimited number of reports in a single submission. Conscious that many States parties are finding it difficult to respect the periodicity of reports due under ICERD, the shortest of all cycles stipulated in the treaties, CERD has recently enacted a new rule:

> "In a case where the period between the date of the examination of the last periodic report and the scheduled date for the submission of the next periodic report is less than two years, the Committee may suggest in its concluding observations that the State party concerned, if it so wishes, submit the latter report jointly with the periodic report to be submitted at the following date fixed in accordance with article 9 of the Convention".[2]

14. In essence, if after CERD has examined a State party report and the next report is due in less than two years, the Committee may use its discretion and invite the State party to forego one reporting cycle.

15. By decision 23/II adopted in June 2000, CEDAW "decided, on an exceptional basis and as a temporary measure in order to address the backlog of reports awaiting consideration and encourage States parties to fulfil their reporting obligations within article 18 of the Convention, to invite States parties with overdue reports to combine these outstanding reports in a single document."[3]

16. CRC recently adopted a rule aimed at introducing flexibility in the periodicity established under the Convention on the Rights of the Child. According to that rule:

(a) When the second periodic report is due within a year after the dialogue with the Committee, the State party shall be requested to submit that report combined with the third one. This rule also applies (mutatis mutandis) when a similar situation occurs with the third and fourth periodic reports;

(b) When the second periodic report is already due at the time of the dialogue and the third report is due two years or more after the dialogue with the State party, the State party shall be requested to submit the combined second and third reports at the time when the third report is due as prescribed under the terms of the Convention. This rule also applies (mutatis mutandis) in cases when the second and third reports are due at the time of the dialogue.[4]

17. CRC stressed that these rules would apply only as an exceptional measure taken for one time only in an attempt to provide States parties an opportunity to respect the strict reporting periodicity foreseen in the Convention (art. 44.1). When this rule is applied, the Committee will communicate to States parties the deadline for the submission of their second and, where appropriate, following periodic reports.[5]

18. While the other treaty bodies have not formalized such a system, CAT has on several occasions accepted two consecutive reports submitted by States parties as a single document. CESCR does not formally accept combined submissions and HRC has recently done so on rare occasions (e.g. Egypt and Trinidad and Tobago). The current practice of CESCR and HRC is to establish in their concluding observations, adopted following the examination of a State party report the date the next report is due.[6] This effectively pardons States parties for all outstanding reports and brings them up to date with their reporting obligations with one submission.

19. Conversely, CESCR and HRC may also establish a due date for the next report within a shorter time than usual if they find, upon examining the report, that the gravity of the human rights situation warrants closer scrutiny. At its twenty-fourth session, in November 2000, CESCR:

> "resolved that, as a general rule, a State party's next periodic report should be submitted five years after the Committee's consideration of the State's preceding report, but that the Committee may reduce this five-year period on the basis of the following criteria and taking into account all relevant circumstances:
>
> (a) The timeliness of the State party's submission of its reports in relation to the implementation of the Covenant;
>
> (b) The quality of all the information, such as reports and replies to lists of issues, submitted by the State party;
>
> (c) The quality of the constructive dialogue between the Committee and the State party;
>
> (d) The adequacy of the State party's response to the Committee's concluding observations;
>
> (e) The State party's actual record, in practice, regarding implementation of the Covenant in relation to all individuals and groups within its jurisdiction."[7]

20. Accordingly, a number of Governments were requested by CESCR and HRC at their 2001 sessions to submit their next reports sooner than the usual five years later.[8]

21. All treaty bodies faced with several reports from the same State party, regardless of whether they are separate submissions, have undertaken to examine all the reports altogether at the same session. All treaty bodies proceed on the basis that among their aims in examining reports is understanding the current level of enjoyment of human rights in States parties, rather than the historical developments that occurred during an earlier period of time that reports should

have covered had they been submitted on time. This has been the approach taken when, as has happened on several occasions, a State party seeking to fulfil its reporting obligations after long delays in the submission of its reports submits a report covering a previous period that the report would have had to address if submitted on time.

Option 2. Readjust reporting deadlines or accept combined reports

22. From the point of view of reporting States, readjusting reporting deadlines or submitting combined reports is likely to be more realistic, whereas maintaining the number of reports to be submitted over a time period could be seen more as a punitive measure for past delinquency than as a measure to ensure compliance with a treaty. Governments may be more motivated to prepare a report if they knew that they would not be penalized in subsequent years by an accelerated reporting schedule, particularly if the alternative is to escape public scrutiny altogether by continuing not to report. Moreover, the Government of a State party may have changed during the period of non-compliance - perhaps several times - and it is unlikely that a new Government would feel responsible for the inaction of its predecessors, notwithstanding the State's responsibility under the treaties it is party to.

23. From the point of view of the treaty bodies, and the secretariat as well, readjusting reporting deadlines or accepting combined reports, thus allowing States parties to "catch up" with a single submission, may be more realistic. As of 15 March 2002, approximately 1,300 reports due under the various treaties were overdue, of which more than 500 have been overdue for more than five years. On the other hand, at their present pace, the treaty bodies collectively examine about 100 reports per year. Various studies (e.g. those by Anne Bayefsky[9] and Philip Alston[10]) have pointed out that were all outstanding reports to be submitted as individual reports, the treaty bodies and the secretariat would all be overwhelmed.

24. One argument against readjusting reporting deadlines or accepting combined reports is that the principle of equal treatment of States parties would be sacrificed. A move towards a more flexible approach to dealing with States parties reports, pardoning a history of delinquency in reporting, might be seen to disadvantage States parties that have complied with their reporting obligations. A State party submitting a report after failing to report in 20 years would be treated the same as a State party that reported regularly for those 20 years. Conversely, as mentioned earlier, some States parties have endeavoured to fulfil their reporting obligations by submitting each report due individually, even when such reports would be examined together owing to the scheduling needs of the concerned committee.

III. DESIGNATION OF A COUNTRY RAPPORTEUR

25. When a new report has been received, each committee assigns to a member the principal responsibility for: analysing the report and supplementary information received from the Government or other partners; preparing the list of issues (for those committees that prepare such lists); and preparing concluding observations or comments. If during the adoption of concluding observations by the plenary it is decided that certain parts of the text must be reformulated and this is not completed during the discussion in plenary, the country rapporteur has responsibility for finalizing the text in all committees except CEDAW.[11]

26. In addition to a country rapporteur, CAT also designates an alternate rapporteur for each State party report examined, who assists the principal with the above tasks. CERD has formally assigned to country rapporteurs the responsibility of taking the lead in posing questions to State party delegations;[12] CERD country rapporteurs therefore begin the questions with detailed coverage of the issues, which other members may supplement with their own questions. The HRC is considering the idea of establishing country report task forces whose members (five or six) would take the lead in the examination of a report and assist the country rapporteur with the drafting of Concluding Observations.

27. The identity of the country rapporteur is made public by CERD, CAT and CRC. Prior to and during their sessions, persons who approach these committees or their secretariats for the names of country rapporteurs are provided with them. Except for CRC, this information is released in a public document following examination of the report, in the annual reports of the committees.[13] This information is not released by the other treaty bodies.

Option 3. Protect the identity of country rapporteurs

28. The treaty bodies may wish to consider the possibility of protecting the identity of their country rapporteurs. Those committees that do not release this information do not do so in order to prevent outside observers from attributing their concluding observations to an individual, preferring instead to present concluding observations as a collective effort. They also seek to protect the country rapporteurs from becoming the objects of pressure or possible harassment from interested parties before the Concluding Observations are finalized.

Option 4. Release the identity of country rapporteurs

29. Alternatively, the treaty bodies may wish to consider releasing the identity of their country rapporteurs. Those committees that do so do it in the interest of transparency. It is often easier for external actors, such as NGOs and the media, to liaise with a specific individual rather than with the entire committee, particularly during the actual examination of a report, when time pressures tend to mount.

IV. INFORMATION FROM OTHER SOURCES

30. While the main basis for the examination of a State party report is the report itself, all treaty bodies attempt to form a clear picture of the actual level of enjoyment of rights in the country under examination by contrasting the information contained in the report with information obtained from other sources. This section highlights some aspects of the practices developed by the committees for accepting and dealing with such information.

A. Contributions from independent sources of information

31. In their examination of States parties reports, all of the treaty bodies rely to varying degrees on country information received from sources other than the concerned State party, including international and national NGOs, United Nations departments and agencies, special procedures mandate holders of the Commission on Human Rights, regional organizations and national human rights institutions and other groups. Such information may complement the

information contained in States parties reports, draw attention to major issues not fully covered in reports, or contribute factual data. It is particularly useful insofar as the treaty bodies do not have a permanent presence in States parties or other means to collect the necessary information directly.[14] While the reporting procedure is conducted as a public process by all treaty bodies, independent information is treated in diverse ways by the treaty bodies and their secretariats.

32. All treaty bodies accept submissions of information from independent sources. All work closely with one or more international or "umbrella" NGOs that facilitate contributions from other NGOs, particularly smaller or national-level NGOs, to the treaty bodies.[15] When a number of NGOs wish to submit information to the treaty bodies, coordinated submissions and presentations are encouraged.[16] For all treaty bodies, NGOs routinely organize lunch time briefings during sessions, with logistical assistance from the secretariat, on many of the countries scheduled to be examined during the session. At those briefings, representatives of NGOs may highlight what they consider to be major issues with respect to a country through oral presentations, visual aids, written submissions, or a combination thereof. Members have an opportunity to pose questions about the issues raised, the claims made, and the methods by which that information was gathered, which helps them assess the reliability of the information and whether and how they will use it during the dialogue with the concerned State party.

33. CESCR, HRC, CEDAW and CRC actively seek information from external sources. As noted in the section on pre-sessional working groups and lists of issues, these treaty bodies also set aside time during their pre-sessional working groups for NGOs and United Nations departments and agencies to address them directly about their concerns. CESCR also sets aside the first day of each session to allow United Nations specialized agencies, funds and programmes and NGOs to update its members on the issues concerning the countries due to be examined at that session. CESCR and CRC have issued guidelines specifically for NGOs to facilitate the latters' interaction with them.[17]

34. The treaty bodies have adopted divergent approaches with regard to the confidentiality of information from independent sources. Due to resource constraints facing the United Nations Secretariat, none of the treaty bodies is able to translate or distribute such information to all interested parties. However, CESCR, CERD and CAT make available all the information before them to the Governments whose reports they are due to examine, except that which the submitting source has requested be kept confidential; CESCR's guidelines for NGOs advise them that their submissions will be shared with the concerned Government.[18] The HRC makes available NGO materials to States parties at the latter's request, except where considerations of confidentiality dictate otherwise.

35. In their discussions on this matter, members of all committees generally agree on the need to make available to the concerned Governments the information concerning them that will be taken into account by the committees. This is in the interest of transparency, especially if such information is deemed to be credible and could serve as the basis for questions that members may pose to those Governments.

36. HRC generally administers the reporting procedure on the basis of the same principle of openness. However, when the information deals with sensitive issues and sharing it could place the source at risk of legal action, intimidation, harassment or attacks against their personal

security, the secretariat may use its discretion in asking the source whether it would agree to its information being shared with the Government concerned. Instances of government reprisals have occurred following the examination of some reports. The Committee respects requests for confidentiality.

37. Reprisals have also occurred in the context of reporting to CAT and CRC. These committees have taken a more direct approach, owing to the particularly sensitive nature of the subject matter dealt with by the former body and the greater awareness about the latter relative to other treaty bodies. In its guidelines CRC invites NGOs to indicate clearly in their submissions whether they wish the Committee to keep their information or its source confidential.[19] When such an indication is absent, efforts are made to verify the intentions of the submitting party. However, information received by the treaty bodies does not always contain the contact details of the submitting party, which creates difficulties in verifying consent. In such cases, the information is considered confidential by default.

Option 5. Protect the identity of sources

38. The Committees may wish to consider adopting a rule or practice to protect the identity of organizations and individuals that submit information to them, except when the submitting party explicitly agrees that its information may be shared. As the work of the treaty bodies becomes better known, they are increasingly likely to receive information from organizations that are not familiar with their rules and practices concerning the public nature of submissions received. Individuals or organizations writing to a treaty body or a member of a treaty body or its secretariat may be doing so in the belief that they are engaging in private correspondence, not a public process. A default policy is especially needed for cases where the submitting party cannot be contacted.

Option 6. Release the identity of sources

39. Alternatively, the Committees may wish to consider establishing a rule or practice to make all information submitted to them public, except when the submitting party expressly requests that confidentiality be respected. If Governments will be asked to respond to information from private sources, the adequacy of responses will likely be greatly affected by whether they are able to review that information, particularly if it deals with very specific allegations, events or individuals. If this approach is accepted as the default policy, efforts will need to be made to ensure as far as possible that submitting organizations and individuals understand that if they wish to maintain confidentiality, they must specifically request it.

B. Secretariat "country analyses"

40. A staff member of the secretariat is assigned to assist each country rapporteur to fulfil his or her responsibilities listed in section III. In addition to normally extensive country files containing raw materials from a variety of sources, CEDAW and four of the five treaty bodies serviced by OHCHR receive documents referred to as "country analyses" or "country profiles" prepared by the secretariat on the States parties whose reports are due to be examined. CERD does not receive country analyses, by its own choice but information gathered by the secretariat is sent to the country rapporteur. Country analyses are internal documents of the committees.

Except for those provided to HRC, all country analyses contain basic information on the country's ratifications of and reservations on relevant human rights treaties and contain not only the information specifically submitted to them but also any conclusions reached by other treaty bodies and United Nations human rights mechanisms, and independent sources, on particular issues or treaty provisions. The committees are provided with the country analyses in time for the examination of the corresponding reports in plenary; those committees that work through pre-sessional working groups receive the country analyses in time for use by the working groups and are then updated for the Committees' work in plenary.

41. Country analyses are prepared by the secretariat at the request of the committees, and their format and contents are determined by the receiving committee. In the case of CESCR, they are more accurately referred to as "country profiles", as they contain no independent summary or analysis by the secretariat but rather a compilation of excerpts from reports issued by many sources relating to each of the articles of the ICESCR. Socio-economic data on matters relevant to specific rights are extracted from the public reports of international organizations such as UNDP, WHO, UNESCO, the World Bank and ILO, in addition to other well-established sources such as the Economist Intelligence Unit. CERD is provided a bibliography of relevant information compiled by the secretariat.

42. The analyses provided to CRC and CAT are the most extensive. In addition to presenting the information listed in paragraph 40, they outline the historical, political, economic and social context of the country analysed and the outstanding issues from the last consideration of a State party's report. They consequently entail much more intense research than is undertaken for the other committees and tax the secretariat's resources to its limits.

43. The analyses provided to CEDAW, in addition to presenting the information listed in paragraph 40, outline the outstanding issues raised by this Committee from its last examination of the State party's report. If there is a United Nations resolution or a special rapporteur on the country or a human rights mission to that country has taken place, this information is also reflected.

44. The country analyses provided to HRC are limited, at the request of the Committee, to an outline of the unaddressed questions from its examination of the last report submitted by the country analysed and an indication of how those questions were addressed in the report currently before the Committee. HRC does not receive country analyses for initial reports.

V. PRE-SESSIONAL WORKING GROUPS AND LISTS OF ISSUES

45. Four treaty bodies (HRC, CESCR, CEDAW and CRC) send a "list of issues" or "list of questions" to States parties on their reports. The list of issues are questions directed at the State party, requesting information on specific issues to supplement certain portions of the report or to clarify matters on which submissions from alternative sources indicate that the State report is missing key information. They also serve as indications of the major issues that are likely to be raised during the dialogue with the Committee, although they are not exhaustive and do not prevent members from raising other issues spontaneously during the dialogue. Lists of issues are considered and adopted in pre-sessional working groups. CAT and CERD do not currently work with lists of issues, but CAT may do so in the future if deemed appropriate.[20]

46. There are structural and procedural differences between the treaty bodies that affect the impact of pre-sessional working groups and lists of issues. The two pre-sessional working groups of the HRC, one of which focuses on communications and the second on State reporting, have effectively been merged into a single working group composed of 9-10 members that deal with both States parties reports and communications alternately at its morning and afternoon meetings. The working group has enabled the Committee to save plenary time, as lists of issues adopted by the working group are now considered to be final and do not need to be reviewed in plenary. In recent years, the structure of the list of issues of the Committee have alternated between a prioritized list, beginning with the issues that the pre-sessional working group considered to be the most serious, and an ordering in accordance with the articles of the Covenant. The HRC adopts lists of issues one session in advance of the consideration of the respective States parties reports. Problems sometimes occur between the July and October sessions, as States parties have less time to provide answers (only 6-8 weeks, in contrast to the 10 weeks between other sessions). The HRC requires government delegations to come prepared to answer the list of issues at the time of the dialogue in plenary. Some delegations submit their answers in written form to facilitate the Committee's work, previous to or following the dialogue, but they are not obliged to do so. However, if written answers or supplementary documents are submitted, the Committee would wish to receive them early enough to be translated and to enable the members to review them thoroughly.[21]

47. CESCR list of issues are limited to requests for statistical information, points of clarification and requests for information on key issues and new developments. CESCR presently requires States parties to provide written answers in sufficient time to have them translated into its working languages. This is possible because CESCR meets only twice per year, with the average six-month lapse between sessions providing ample time for States parties to prepare their replies and for them to be translated. In order to better focus its dialogues with States parties, it has decided to limit the questions posed in lists of issues to 40 for initial reports and 25 for periodic reports, with the possibility of adding further questions in the case of grossly inadequate reports.[22] The structure of lists of issues has been modified, so that the Committee will in the future request written responses only for "statistical data, information requested in the guidelines but missing in the report, points of clarification regarding the report, and information on key legal, structural, policy and institutional issues (for the initial report) or new developments (with regard to periodic reports)".[23] As with other treaty bodies, the list of issues is useful for the Committee in that it allows States parties to update the information contained in their reports, which in the case of CESCR may have been submitted several years before being examined owing to the large backlog of reports submitted and awaiting examination.

48. The lists of issues of CRC have grown to become the most lengthy of the lists issued by any of the treaty bodies. Today, lists of issues are generally divided as follows: (a) requests for very detailed statistics; (b) requests for information on the cluster of articles relating to the general measures of implementation; (c) a request for copies of relevant legislation and copies of the text of the Convention in the major national languages; (d) requests for identification of priorities; (e) an invitation to States parties to update their reports and explain relevant new programmes and legislation. CRC is trying to limit the length of its lists of issues. The current

practice of the Committee is to require States parties to submit written answers to requests for relevant data, statistics and information on general measures of implementation (sections I and II), full text copies of the Convention in existing languages and/or dialects (section III), and updated information on laws, programmes and policies (section IV) and to identify issues that might be raised in the dialogue with States parties (section V). As with CESCR, CRC also has a large backlog of reports awaiting examination, and the pre-sessional working group and lists of issues enable States parties to update the information contained in their reports. States parties that have submitted a report yet to be examined and already owe the next report are strongly discouraged by the Committee from submitting the outstanding report until the previous report has been considered and recommendations on it are adopted. This is to encourage States to base the preparation of future reports on the recommendations adopted on the previous report and on the follow-up undertaken on those recommendations. The CRC is unique in that its pre-sessional working groups are composed of the entire membership of the Committee.

49. CEDAW is also unique in that its pre-sessional working groups examine only periodic reports. CEDAW consequently does not issue lists of issues on initial reports. Difficulties have been encountered when CEDAW receives extensive information from States parties between the pre-sessional working group and the session at which the reports of those States parties are due to be examined. In such cases, a list of issues is adopted on the basis of information that might have been superseded.

Option 7. Adopt lists of issues

50. CAT and CERD may wish to consider adopting a practice of formulating a list of issues, via the other committees. CEDAW may wish to consider formulating lists of issues in respect not only of periodic reports but also initial reports, as many of the advantages of lists of issues apply to both types of report.

51. The preparation of lists of issues allows the committees and their country rapporteurs to begin early with their in-depth examination of a country situation. It enables the reporting process to be more focused on the important issues. While some of the questions commonly contained in lists of issues are standard questions about fundamental conditions for the enjoyment of the rights that they monitor, such as the status of the treaty in domestic law, a number of questions are posed on current developments to bring the State party report up to date. These are particularly important when there are long delays between the submission of the report until its examination by a committee in plenary. They also address any matters inadequately covered in the report, thus serving as a way to ensure that the necessary information for a productive and constructive dialogue is available sufficiently in advance of the dialogue. In the case of CESCR and CRC, the members have the added advantage of being able to review sometimes considerable supplementary information in their own languages.

52. Lists of issues are also beneficial for those working with the treaty bodies. For States parties, answering lists of issues is a way to prepare for the dialogue, as they provide preliminary indications about what members believe to be the major issues. Lists of issues and pre-sessional

working groups also mobilize the main partners of the treaty bodies that contribute information, including NGOs, United Nations agencies and OHCHR field presences, early enough in the process to enable their contributions to make a greater impact. Pre-sessional working groups present an opportunity for them to address treaty body members directly and to answer questions from the members. The fact that the working groups operate in closed meetings facilitates the receipt of information from organizations wishing to address the treaty bodies in confidentiality.

53. Pre-sessional working groups and lists of issues have considerable resource implications, both human and financial. At a minimum, the committees and the secretariat would need to devote time and effort to producing lists of issues. A country analysis of States parties whose reports are scheduled to be considered and a draft list of issues are usually prepared by the secretariat to help the committees with this task. The country analysis would normally need to be updated for the actual examination of the State party report. When there is a long lapse of time between the adoption of a list of issues and the dialogue with the State party, the work necessary to update a country analysis is significant. The double demands for information for pre-sessional working groups and for plenary examination of reports affect all who prepare submissions to the treaty bodies - secretariat, United Nations agencies, NGOs and Governments - as well as the members of the committee and secretariat who must then review the submissions.

54. For States parties, lists of issues are on occasion so extensive as to require information almost equal in volume to the main report to be examined, although committees are now making a conscious effort to limit the number of questions in their lists. The additional documentation generated by lists of issues can be considerable and represent a burden on the secretariat when replies must be processed.

55. Moreover, the pre-sessional working groups at which lists of issues would be discussed and adopted adds an additional week to each session during which some or all members would need to be available. The attendance of members at these meetings also incur additional DSA costs as well as the costs of normal meeting facilities, such as interpretation.

VI. HELPING STATES PARTIES PREPARE FOR THE DIALOGUE

56. While the secretariats of all committees respond favourably to requests from the Permanent Missions of States parties due to appear soon before a committee, briefings for States parties are given in various ways. State representatives are informed about the procedures of the concerned committee and the structure of the dialogue, and they are provided if necessary with the basic texts of the relevant committee.

57. In the case of CESCR, CAT and CERD, the secretariats conduct briefings for individual States on an ad hoc basis, upon request.

58. The CRC secretariat systematically suggests to permanent missions that a briefing be organized for them approximately two months prior to the session at which their reports are scheduled to be examined. Briefings are held for individual States parties that respond favourably. Generally, the HRC secretariat also holds an informal pre-sessional briefing for permanent missions whose reports are due to be examined.

59. CEDAW organizes prior to each session a collective briefing for all States due to appear. The CEDAW secretariat organizes a collective briefing for States parties of a half day's duration approximately one month prior to the session at which their reports are scheduled to be examined. States parties are advised on a wide range of technical matters, including the composition of the delegations to be dispatched. These briefings are usually followed by meetings between the secretariat and individual States that subsequently seek further clarification.

60. With regard to the composition of the State party delegation, CRC "welcomes the representation of the State party to be a delegation with concrete involvement in strategic decisions relating to the rights of the child. When delegations are headed by someone with governmental responsibility, the discussions are likely to be more fruitful and have more impact on policy-making and implementation activities".[24] The same general principle applies to all other committees with respect to the rights covered in the treaties that they respectively monitor. Except for CEDAW, however, the committee secretariats do not generally advise individual States parties on the composition of the delegations to be sent to dialogue with their respective committees, beyond such general indications expressed by the treaty bodies; this is considered to be essentially a State party prerogative.

Option 8. Systematize a practice of advance briefings for States parties

61. The treaty bodies, through their secretariats, could systematically provide briefings to States parties whose reports are due to be examined at a forthcoming session. Representatives of States parties would benefit by being informed of the specific procedures of the treaty body before which their delegation is due to appear. The briefings should be limited to procedural matters, such as the structure of the dialogue, the timeframe within which they will be expected to provide answers to questions, possibilities if applicable of providing written information subsequently, the timing of the release of the concluding observations, and how the treaty body is likely to deal with written comments from States parties on concluding observations. In explaining the committees' expectations of State party delegations, the briefings could also serve as an occasion to provide advice on the composition of the delegation, which has a direct impact on the quality and nature of the dialogue. It could be made clear from the outset that such briefings would be strictly procedural and would not touch upon the human rights issues relating to the participating States parties likely to arise during the dialogue.

VII. EXAMINATION OF STATES PARTIES REPORTS: DURATION AND TIMING OF MEETINGS

62. At present the treaty bodies examine reports in plenary, public meetings. According to United Nations standards, a meeting is a of three hours' duration with two meetings held per day, morning and afternoon. The amount of meeting time devoted to a dialogue may be roughly outlined as follows.

Average meeting time devoted to the examination of a State party report

	Initial reports (number of meetings)	Periodic reports (number of meetings)
CESCR	3	2
HRC	3	2
CERD	2	2
CEDAW	3	2
CAT	2	2
CRC*	2	2

* In 2000, CRC changed the number of meetings for both initial and periodic reports from three to two meetings, thereby increasing the number of considered reports per session by 50 per cent (from six to nine reports)

63. In the case of reports submitted after a long period of non-reporting, the treaty bodies generally undertake a comprehensive review, as they do with initial reports.

64. The scheduling of the meetings with government delegations varies among the committees. HRC generally considers initial reports on an article-by-article basis. The Chairperson summarizes the main concerns at the end of each dialogue to avoid repetitious interventions by members. Initial reports are examined by HRC in three meetings over two days. Periodic reports are examined by HRC over two consecutive meetings, held either on the same day or on an afternoon and the following morning.

65. CESCR dialogues have generally proceeded article by article, with article 15 of the Covenant frequently becoming the subject of dialogues that exhaust the issues relating to the previous articles. While the Committee has undertaken to prioritize lists of issues in the past, this practice has not been systematized. In order to better manage the time available for its dialogue with Governments, CESCR recently decided to set aside half an hour before a dialogue commences to review in closed meeting the main issues concerning the State party. This coordination meeting takes place within the nine hours allotted to initial reports and outside the six hours allotted to periodic reports. During the private meeting, the Committee designates a main commentator on each major article or issue. Additional spontaneous questions may be asked but members are cautioned not to repeat the concerns or questions raised by the main commentator.[25] CESCR generally examines initial reports over three meetings over two days and periodic reports over two meetings on a single day. The Chairperson guides and sums up the discussions.

66. CERD generally structures its dialogues with States parties in two parts: one for the questions of the members, and the second for the responses from the delegation. It allots two meetings to each report, normally on an afternoon and the following morning. As noted previously, following introductory remarks by the delegation, the responsible country rapporteur leads the dialogue with extensive commentary and questions on all articles, which other members may follow with their own additional questions. The delegation is requested to

respond on the spot as far as time permits during the first meeting, and to continue its responses at the second meeting. After all questions and answers are exhausted, the country rapporteur takes the floor to summarize the discussion and present his or her preliminary views.

67. CAT also structures its dialogues with States parties in two parts: one for questions and one for answers, with two meetings allotted to each report, normally on a morning and the afternoon of the following day. The principal and alternate country rapporteurs lead the questions on the substantive articles of the Convention, each normally assuming responsibility for half of the articles. Following an introduction by the delegation, one of the rapporteurs opens the question period by asking all of his or her questions. The second rapporteur follows with his or her questions on the second part of the Convention. The floor is then opened to all members, who may pose additional questions on all articles. The delegation may respond on the spot if time permits, and continue at the second meeting. Following all questions and answers, the co-rapporteurs make their closing remarks. They are not required to summarize the discussions, although some take the opportunity to do so.

68. CRC structures its dynamic and interactive dialogues with States parties by the eight clusters of articles.[26] CRC lists of issues identify the issues likely to arise during the dialogue. The Committee has not yet moved towards grouping the issues by priority. The examination of a report is generally scheduled for two meetings, on the morning and afternoon of the same day. No decision has been taken yet as to how much meeting time will be devoted to the reports to be submitted under the Optional Protocols to the Convention. The Chairperson guides and sums up the discussions.

69. CEDAW distinguishes between initial reports and periodic reports in its dialogues with States parties. The Committee does not formulate a list of issues on initial reports. They are examined over three meetings, the first two normally held over a full day consisting entirely of questions posed by the Committee. The Committee meets in closed session during the first 30 minutes of the first meeting, when the country rapporteur highlights the areas s/he considers to be most important and the other Committee members add their inputs. To maximize the efficiency of plenary meeting time, the members divide the articles among themselves so that there is generally one member asking questions on each article. The delegation is scheduled to return for the third meeting approximately one week later to provide written answers to the questions. On periodic reports, States parties receive a list of issues in advance which their delegations are expected to respond to upon arrival, along with any additional questions posed by members of the Committee. The examination of periodic reports takes place over two meetings, on the morning and afternoon of the same day. There is no summary of the discussions.

Option 9. Schedule less meeting time for the examination of reports

70. Treaty bodies with a backlog of reports awaiting examination could consider the value of scheduling the examination of reports over a shorter time. This could allow the committees to focus their discussions and to avoid repetition in their questions. It could also allow more reports to be examined with current resources.

71. Conversely, scheduling more time would allow members and government representatives to engage in more in-depth discussion and to follow up on questions not adequately responded to. The efforts of some treaty bodies to avoid repetitious welcoming courtesies and questions have had mixed results. It is possible that cutting back further on the time for the dialogue would reduce the time available for substantive discussions. It is also possible that when more time is available, some members may revert to questions posed by others.

Option 10. Designate the chairperson or a member to sum up the dialogue

72. The committees that have not already done so may wish to consider adopting a practice of designating a member to summarize, in public meeting at the end of a dialogue in the presence of the State party delegation, the main points raised during the dialogue. The designated member could be the country rapporteur, the chairperson, or another member determined in advance. In those committees that have already established such a practice, the summary provides that all interested parties present during the dialogue can hear the concerns of the Committee that are likely to be reflected in the subsequent concluding observations. The summary serves as the main basis for the draft concluding observations to be prepared by the secretariat and country rapporteur. It also provides a final opportunity for the delegation to clarify any matter raised that might be based on a misunderstanding or factual inaccuracy. Logically, a summary will require a slight reduction in the time reserved for the dialogue itself.

Option 11. Schedule meetings over several days

73. The committees may wish to consider scheduling the dialogues with States parties over a span of two or more days. Delegations are often posed very specific questions or are asked for specific data that may or may not be on hand. For some questions, they may need to obtain information or obtain clearance from their capitals. Some questions may require more extensive research than is possible on the spot or over the two-hour lunch break between the two official meetings held each day, which is the only break in a day's proceedings. It could be seen to be in the interests of the committees to help delegations respond to their questions as fully as possible by allowing delegations more time to prepare their responses and, if necessary, to contact their capitals in the course of their preparations. This could be particularly important for countries for which the working hours of the capital and of other interested parties, such as national NGOs, do not coincide with the break between meetings.

74. However, some committees maintain that States parties should send properly qualified and prepared delegations for the dialogue and that delegations should be prepared to answer all questions on the spot, except possibly the most technical or those dealing with very specific facts or cases. The scheduling over several days would have time and resource implications for States parties, as it would require the prolonged presence of the members of the delegation, many of whom will have travelled from their capitals. In addition, members of the committees would need to shift their focus of attention each day from one country situation to another, thereby causing additional complications.

Option 12. Structure the dialogue by order of priority issues

75. The committees may consider the value of structuring the dialogue with States parties by order of priority issues. Those committees that work through pre-sessional working groups would be aided by the preliminary analysis conducted by the working groups. This would help to ensure that lack of time would not lead to cursory or no coverage of any of the major issues concerning each State party.

76. However, there are difficulties with prioritization. Individual members may not always agree on what the priorities should be, particularly if the priorities identified by pre-sessional working groups are not reviewed by the plenary. Some members may consider different issues to be priorities with respect to the same country, and some members consistently raise issues of special personal interest or professional competence with respect to all countries.

Option 13. Work in chambers

77. It has been suggested that Committees should consider working on communications in simultaneous chambers whose conclusions would not need to be reviewed in plenary but would be accepted as the final views of the Committee.[27] This would enable more States parties to be examined within the current meeting times. While much thought would have to be given to the specific modalities of this option, possibilities could be explored that would maximize economy and efficiency.

78. However, the reporting process, if conducted in chambers, could lose the contributions of the whole of the Committee. One of the main principles guiding the election of members of all treaty bodies is that the composition of the treaty bodies should be representative of all the major regions, cultures, religions and legal systems. In the example of linguistic chambers, depending on the specific composition of the members, it is conceivable that at some point the only members able to work in a certain language may be nationals of one region.

79. Consideration would also need to be given to the resource implications of this option. Maintaining current levels of assistance provided by the secretariat in relation to each State party report for an accelerated pace of examination of reports and the servicing of simultaneous meetings would require considerable strengthening of secretariat resources. In addition, the demands on the partner organizations of the treaty bodies, such as NGOs, United Nations agencies and inter-governmental organizations, would significantly increase. Not only would the volume of work involved in preparing written contributions be affected, but as most organizations send a single representative to cover treaty body sessions, when several countries of relevance to their work are examined simultaneously in chambers, they would have to choose which countries or chambers to cover.

VIII. CONCLUDING OBSERVATIONS AND COMMENTS

A. Formulation and adoption by the Committees

80. The Geneva-based treaty bodies formulate and adopt concluding observations through a generally similar process, which can be described as follows. After a dialogue with a State party, the secretariat normally prepares a draft based on the comments and concerns expressed by members during the dialogue, as well as the points highlighted by the committee chairperson or member in his or her final summary of discussions for those committees that have instituted this practice. The secretariat structures the main points in the standard format and terminology of the committee and verifies factual references. Some country rapporteurs choose to sit with a designated staff member to present the main points that they wish to include, or to provide the main points in writing prior to the preparation of the draft. This occurs to varying degrees with all committees and is the established practice with CEDAW, although some members of the committees prefer to draft concluding observations without secretariat assistance. The secretariat draft is submitted to the country rapporteur, who reviews and modifies it, if necessary, to ensure that all the concerns raised by members are addressed. This draft is sent for translation into the working languages of the committee.[28] The country rapporteur presents the new draft to the committee for adoption in closed meeting, at which time all members of the committee have an opportunity to review it and to suggest modifications; this is the practice in all committees except CERD, which adopts concluding observations in public meeting. The secretariat incorporates the agreed changes into the text in the language of drafting, which is checked by the country rapporteur. This is released publicly as the "advance unedited version" and placed on the OHCHR web site, then sent for final editing and translation. The advance version is subsequently replaced by the final official edited version when that becomes available.

81. All the committees except CEDAW and CAT issue the final official versions of their individual concluding observations as separate documents in the working languages of the Committee[29] within a few weeks following the session at which they were adopted. Concluding observations are reproduced by all the committees in their annual or biannual[30] reports to the General Assembly[31] in the six official languages of the United Nations.

82. The process by which the concluding observations of CEDAW are prepared deviates significantly from the process described above. The process for CEDAW begins with a closed meeting immediately following the dialogue at which all members raise the matters they wish to include in the concluding observations. Based on that discussion, a draft is prepared by the country rapporteur and the secretariat. The country rapporteur reviews the draft to ensure that all the concerns of the Committee are included. The country rapporteur's draft is then reviewed by the Committee rapporteur and sent for translation into all the official languages. This version is discussed by the Committee in closed meeting. The agreed modifications are incorporated into the draft by the secretariat and the new text is cleared by the Committee rapporteur. The secretariat conducts a final check on the references contained in the concluding observations to ensure factual accuracy; this is usually completed within a week of the close of the session. CEDAW is unique in that it maintains in its concluding observations a section summarizing the introductory intervention of the State party delegation. This section is sent to the concerned permanent mission after the end of the session to allow it an opportunity to check for factual accuracy. Advance unedited versions, in English only, of the concluding observations are

normally put on the web sites of OHCHR and the Department for the Advancement of Women within a few weeks of the end of each session; they are officially released with their publication in the annual reports of the committees to the General Assembly.

83. There are also some differences among the Geneva-based treaty bodies from the general process described above. Like CEDAW, CESCR and CAT also reserve closed meetings immediately following a dialogue at which time all members may express their views and concerns. The matters raised in this discussion, and in the chairperson's closing summary in the case of CESCR, serve as the main basis for a draft prepared by the secretariat and the country rapporteur. The draft is then translated into the working languages of the committee and discussed in a closed meeting of the plenary.

84. HRC circulates among its members the draft of the country rapporteur in the original language. Members review the draft outside formal meeting time, and those who wish to suggest modifications are requested to do so by writing to the country rapporteur, who revises the draft accordingly. The new draft is then sent for translation and is reviewed in a closed meeting of the plenary.

85. CERD circulates the draft of the country rapporteur in English, if it was drafted in English, for advance commentary by members and for adoption in plenary. If the language of drafting was French or Spanish, which are the other working languages of the secretariat, these texts are translated into English for adoption by the plenary and there is no advance circulation.

Option 14. Establish a means by which all committee members can provide input into the drafts of country rapporteurs prior to translation

86. The committees may wish to consider the possibility of reserving plenary meeting time, as do CEDAW, CESCR and CAT, during which all members are able to convey their views and concerns prior to the drafting of concluding observations or comments. As most of the members' views would already have been taken into account before the texts are translated, the time needed in plenary for adoption could be minimized, limited to questions of specific wording, or focused on the most difficult or controversial matters. Valuable meeting time could be saved because the plenary would normally not need to enter into new issues. This is particularly important during the final week of every session, when the time pressure is greatest.

87. Alternatively, the committees could consider the value of adopting the approach of HRC of circulating the country rapporteur's draft concluding observations prior to translation and adoption in plenary. All members would have had an opportunity not only to express their concerns but to review the draft and suggest specific modifications to the text. The experience of HRC has by and large been positive in expediting the adoption of concluding observations.

B. Cross-referencing among treaty bodies

88. The treaty bodies have divergent views on cross-referencing of each other's work. CESCR and CRC are generally open to making cross-references and have occasionally included references to the other treaties in their concluding observations, particularly in the context of

welcoming or recommending ratification of the other treaties.[32] These Committees, particularly CRC, refer to a wide range of the relevant treaties, principles, rules and guidelines in their work, notably ILO conventions, the conventions on statelessness and refugees, and rules and guidelines relating to the administration of juvenile justice. On rare occasions on matters of direct relevance to the treaty in question, references to case law of regional human rights courts have also been made.[33]

89. HRC, CERD and CAT do not favour such a practice, some members having expressed the view during the adoption of concluding observations that that would exceed their mandates under the treaties that they respectively monitor. Questions about matters relating to other treaties or principles may be raised during the dialogue but these committees have generally declined to make references to them or to the work of other treaty bodies or human rights mechanisms, although CAT frequently mentions the work of the Special Rapporteur on torture and the Voluntary Fund for Victims of Torture, and occasionally refers to other relevant special procedures mechanisms. Both States parties and these committees would benefit from the practice of cross-referencing.

Option 15. Encourage cross-referencing in reports

90. While all treaty bodies fulfil defined mandates, as set forth in the treaties or resolutions establishing them, today, the treaty bodies are increasingly viewed as a collective treaty system. This is evident in the deliberations of the Commission on Human Rights, in the Economic and Social Council and in the General Assembly, as well as on the part of the external partners of the treaty bodies and independent observers. As the treaty bodies continue to reflect on how their respective work could be made to be more complementary and mutually reinforcing, they may wish to consider the possibility of including or strengthening references to each other's work, where relevant. This would add practical meaning to the principles of indivisibility, interdependence, inter-relatedness and universality of human rights.

C. Structure and contents

91. Over the years, the structure of concluding observations adopted by the treaty bodies has generally coalesced around one basic structure, consisting of the following sections: (a) an introduction; (b) positive aspects; (c) factors and difficulties impeding or affecting the implementation of the treaty; (d) principal areas of concern; and (e) recommendations.

92. The introduction identifies the documents considered (normally the State party report, core document, list of issues, and replies to the list of issues) and the dates on which they were examined. Under "positive aspects", the treaty bodies acknowledge the measures taken to implement the treaty and note the areas in which significant progress was made. The section entitled "factors and difficulties" was conceived as a way to acknowledge any underlying circumstances that might impede government efforts to implement the treaty. While this section was intended to acknowledge extreme conditions that Governments could do little to influence, such as natural disasters, epidemics, or threats to the national security, some treaty body members question its usefulness. They maintain that, even in the situations such as those mentioned, there are usually many ways that Governments can prepare for or mitigate a negative impact on human rights, and the onset of national emergencies can often be traced in part to past

actions or inactions by the Government. It is therefore not clear to them which matters should be identified as a "factor" or "difficulty" and which should be a "concern". This line of reasoning has led HRC to abandon this section of its concluding observations. The question has been raised in CESCR, but no final determination has been made to date.

93. The sections on "concerns" and "recommendations" constitute the main body of the concluding observations. As the titles suggest, these sections outline the treaty bodies' main concerns and their recommendations for future action. HRC, CERD and CRC have decided to merge these sections into one, with a recommendation usually suggested for each concern identified. The merging of these sections reduces repetition of the concerns.

94. In addition to these common elements, the concluding observations of CEDAW also contain a section summarizing the introductory statement of the State party delegation, as noted earlier.

95. Within this general structure, the treaty bodies present the specific issues in two ways. The more common approach is article-by-article coverage of the main issues and recommendations. The major or more pressing issues are identified by the terms used, such as (the Committee) "is concerned" vs is "deeply concerned", or "recommends" vs "urges". The second approach used is a prioritized list of concerns and recommendations. Some treaty bodies have experimented with this idea, but the problems encountered in structuring the dialogue by priority issues also apply here.[34]

96. The concluding observations of CRC are the most extensive, frequently exceeding 90 paragraphs (15-20 pages) with sub-headings, while those of other committees rarely exceed 30 paragraphs. Within the section on concerns and recommendations, the Committee endeavours not only to detail its concerns but also to propose specific actions to address them and recommend programmes and organizations from which technical assistance may be sought. The tendency towards greater specificity in the CRC concluding observations, and increasingly in those of CERD and CAT, contrasts sharply with the tendency of other treaty bodies to limit the length of their concluding observations.

Option 16. Coordinate the structure of concluding observations

97. The treaty bodies may wish to review the value of each section of the concluding observations, such as the section on "factors and difficulties", or the introductory section on CEDAW's concluding comments. From the perspective of readers, it would seem difficult to understand why some factors may be accepted as mitigating circumstances beyond the control of the Government by some treaty bodies and not by others. States parties may feel they are not treated equally by the treaty bodies when one committee records their intervention and the others do not. The regrouping by HRC, CERD and CRC of individual recommendations under the concern that they address generally has had the desired effects of reducing repetition and making the concluding observations of these committees easier to read, since each recommendation can be identified with the specific concern that gave rise to it. Thus, the treaty bodies may wish to articulate the reasons behind the structure that they have adopted, with a view to engaging in a

concrete discussion on the subject, sharing their views and experiences, and possibly arriving at a coordinated structure. In particular, the treaty bodies may wish to review the value of each section of concluding observations, such as the section on "factors and difficulties".

D. Release

98. The release of concluding observations varies between the Geneva-based bodies but is generally done within two days of the conclusion of a session. They are generally forwarded only to the concerned permanent missions but when officially released they are available in hard copy in the conference room for any interested party.

99. HRC generally releases the texts of its concluding observations on the penultimate day of the session, as soon as the secretariat incorporates the changes made upon adoption. They may thus be available before the end of the session. They are shared with the permanent missions and available to the public at the same time. CESCR normally releases publicly and forwards the text of concluding observations to the concerned permanent missions on the last day and after the closing of each session, which is always a Friday. CAT invites a representative of the concerned State party to return to a specified meeting, held in public some time before the end of the session, at which time the Committee will read aloud the text of the unedited version of the conclusions and recommendations it has adopted. The text becomes available to any interested party as of that moment. In the case of CERD, the unedited concluding observations are adopted and sent to concerned States parties throughout each session. They are available for any interested party from that moment. CRC releases its concluding observations on the last day and after the closing of each session.

100. All concluding observations by CEDAW are publicly released at the same time, after all the texts have been checked for factual accuracy, normally one or two weeks after a session has concluded.[35] The concluding observations on a given country are sent, by fax or by e-mail, to all who participated in the examination of that country's report.

101. Concluding observations adopted by the Geneva-based treaty bodies are generally made available, in advance unedited form, on the Treaty Bodies Database and the OHCHR web site within a few days of the close of each session. Efforts are being made to ensure that CEDAW information can also be made available quickly on the Database and through the web sites of OHCHR and the Division for the Advancement of Women.

Option 17. Coordinate the release of concluding observations

102. Except for the "already initiated", many actors involved with the reporting process - whether States parties, NGOs, United Nations departments and agencies, or other interested persons - informally comment that the different practices of the treaty bodies make their interaction with them cumbersome, particularly for those who wish to work with several treaty bodies. The release of concluding observations is an example of a relatively simple procedural matter that, if harmonized, could facilitate the efforts of partners subsequently to publicize and use the concluding observations. It affects the plans that partner organizations may wish to make to publicize the findings. Some NGOs, for example, unaware of the different practices of the treaty bodies, have occasionally scheduled press conferences in their home countries on the final

day of a session, only to find that the final adopted texts were not available. The treaty bodies may wish to consider the possibility of determining a common practice regarding the timing of the release of concluding observations in order to help their partners understand when they can with reasonable certainty expect the texts.

103. A second issue regarding the release of concluding observations is the question of direct transmittal to the organizations that contributed to the process. Some treaty bodies transmit, by fax or by e-mail through their secretariats, the final adopted texts to all organizations that contributed to the reporting process of specific countries, while others make them available only in the conference room. Others transmit them to organizations that specifically request a copy. This poses difficulties for organizations whose representatives cannot remain in Geneva or New York for the entire session or who were unaware that they needed to request a copy. A standard approach to dealing with this matter could be explored by the treaty bodies.

E. Comments of States parties

104. Some States parties, upon receiving the concluding observations adopted by a treaty body following the examination of a report, have submitted their views on the concluding observations. While these are usually presented as clarifications of factual information, some address matters that are subjective in nature or express disagreement with some of the conclusions reached by the treaty body.

105. The treaty bodies have generally dealt with such reactions in three ways. CERD publishes the written reactions of States parties as an annex in its annual reports to the General Assembly, along with the text of the concluding observations in question.[36] CAT, in accordance with article 19 (4) of the Convention and rule 68 (3) of its rules of procedure, may, at its discretion, decide to include its concluding observations, together with any observations thereon received from the State party concerned, in its annual report to the General Assembly.[37] The HRC may decide to take note of such reactions in their annual reports or to summarize the main gist of such State party reactions, without reproducing the full text of the reactions. Instead, it publishes them in separate documents, as it does with its concluding observations.[38]

106. By rule 71 of its provisional rules of procedure,[39] CRC is to include in its reports suggestions and recommendations together with comments, if any, received from States parties. The Committee receives few such comments from States parties, approximately one to three per two years. The Committee has interpreted article 45 (d) of the Convention on the Rights of the Child to mean that it must publish comments from a State party in their entirety in its reports if the State party specifically requests that they be published.[40] If no such specific request is made, the fact that a letter was received from the State party is noted in the report of the next session, without publishing the contents.[41]

107. CESCR has received some reactions but has not established a procedure to deal with them. At present, the receipt of such comments is not reflected in any of the documents of the Committee.

108. In decision 21/II[42] CEDAW decided that observations submitted by States parties would be circulated to members of the Committee and their receipt acknowledged in an annex to the Committee's next annual report to the General Assembly. The Committee may decide to make available such observations independently of its annual report.[43] Reference is made to the section on "adoption of concluding observations", where the practice of CEDAW is outlined. The Committee's practice of verifying with States parties the accuracy of the summary of their introductory intervention may serve to minimize the likelihood of States parties finding it necessary to react with factual clarifications.

109. These various approaches reflect the views of the treaty bodies about the independence of their roles and the status that they accord to the views of the States parties that have been the subject of their scrutiny. In their discussions, members of CERD have expressed the view that States parties, which are ultimately responsible for monitoring the implementation of the Convention, have a right to express their views on the work of the Committee and should be entitled to have their views accorded equal treatment with those of the Committee. In contrast, members of HRC place emphasis on the role of the Committee as an independent body established by the States parties to monitor the implementation of the ICCPR on their behalf. Having reached its conclusions on the basis of all information available to it, including all explanations offered by States parties during their dialogue, the Committee has not considered it appropriate to allow States parties the final word on concluded dialogues, nor to reopen such dialogue by commenting on the comments of States parties, an exchange that could continue indefinitely.

IX. PRESS CONFERENCES

110. All the treaty bodies generally hold a press conference at the end of their sessions to announce the main conclusions and activities of the session to the press. Attendance at these press conferences varies, depending on the countries examined and the availability of press officials. The latter factor may be affected by other important meetings or press briefings that may be taking place simultaneously. The treaty bodies are normally represented at the press conferences by the chairperson and two other members, usually members of the bureau or the country rapporteurs for those countries that were examined at the session that are likely to be of greatest interest to the press. In the case of CAT, the whole Committee is present at press conferences, and questions relating to specific countries are answered by the relevant country rapporteurs.

111. The advance unedited versions of all concluding observations, general comments or statements adopted at the session are distributed at the press conferences by the Geneva-based treaty bodies. The representatives of some treaty bodies at the press conferences are supported by background or briefing notes prepared by the secretariat for those occasions.

Option 18. Reconsider the preparations for press conferences

112. The purpose of the press conferences is to release the conclusions of the treaty bodies and to make their work more widely known among the general public. It would appear that their impact is greatest when media enterprises from one or more of the countries examined have correspondents based in Geneva or in New York. Notwithstanding such factors beyond their

control, the treaty bodies could consider ways to better highlight their accomplishments or notable developments in countries in a more "newsworthy" manner. For example, they could draw attention, with respect to certain rights, to new interpretations that they have elaborated, to innovative initiatives of States parties, to any major commitments made by senior members of the government delegations, or to global or regional trends that they have observed. Efforts could be made to avoid procedural explanations and the use of highly technical, complex or nuanced legal language. It is advisable that at least one treaty body member with some experience with the press be present at such press conferences.

Option 19. Reconsider the representation of the treaty bodies at press conferences

113. The treaty bodies might be able to make a better impact at press conferences if they could ensure that the key members best able to respond to the questions most likely to be raised are prese t. At a minimum, that all of the countries examined at the session should be able to be discussed by members who can speak authoritatively about the discussions. For example, consideration may be given to requesting the presence of all the country rapporteurs, in addition to the chairperson.

X. EXAMINATION OF REPORTS IN THE ABSENCE OF A DELEGATION

114. The possibility of examining reports submitted by States parties in the absence of a government delegation has been discussed by all the committees. Although none of the treaties require government delegations for the committees to examine their reports, the practice of inviting States parties to be represented during the examination is by now well established. However, while none of the committees views the possibility of examining reports without a delegation favourably, some have moved in this direction, particularly in cases of last-minute requests for postponement.

115. The matter was recently considered by HRC. This Committee had in recent years been notified on a half dozen occasions that a delegation would not be participating at the session at which it was scheduled to appear, sometimes on the eve of that session or even on the day of its scheduled appearance. The option, however, was ultimately rejected.

116. The long-standing policy of CESCR has been not to grant last-minute requests by States parties to defer the examination of a report. It proceeds to consider all scheduled reports, even in the absence of State representatives.[44]

117. CEDAW has never considered a State party situation in the absence of a report. The idea has been discussed but no conclusion has been reached. CAT, CRC and CERD do not consider reports in the absence of a delegation.

Option 20. Establish clear criteria for the examination of reports in the absence of a delegation

118. Last-minute cancellations of the scheduled appearance of States parties are disruptive to the work of the committees, as they make it difficult or impossible to schedule reports of other States parties. The reasons given for requests for postponements vary and have included changes

in Governments, drastic changes in national circumstances requiring a redrafting of the report, and practical difficulties in making available the government personnel with the necessary expertise. While a last-minute request for postponement, when the examination of the report was scheduled months ahead of time, is generally viewed with some scepticism by the treaty bodies, certain circumstances may be considered to be reasonable. The treaty bodies may wish to consider defining the conditions and criteria under which requests for postponements might be granted. These could include, for example, notification to the Committee at least four months before the scheduled appearance, or the occurrence of extraordinary and unforeseeable events, such as a natural disaster or other national emergency.

XI. EXAMINATION OF STATES PARTIES IN THE ABSENCE OF A REPORT

119. The large number of overdue reports is a major concern to all treaty bodies. Non-submission of reports impedes their ability to fulfil their mandates to monitor the implementation of their respective treaties by States parties.

120. CESCR and CERD routinely schedule for examination States parties that are overdue in their submission of reports by five years or more. CERD schedules a number of such States parties at each session and undertakes a "first-round review of the implementation of the Convention" on the basis of the previous report examined; if no report is submitted within five years of the first-round review, the Committee proceeds to undertake a "second-round review".[45] In the case of a State party that has failed to submit an initial report, it does so on the basis of all information submitted by the State party to other United Nations bodies or, in the absence of such material, reports and information prepared by United Nations bodies themselves. In practice, the Committee considers such information in respect of all reports, as well as information from other sources, including NGOs. The question of the extent to which conclusions communicated to the State party under the review procedure could be based upon such material remains a matter of ongoing discussion. The committee publicly identifies the countries to be examined under this procedure. When States parties indicate to the committee an intention to submit a report in the near future and request a postponement, the committee generally accommodates such requests.[46] CERD adopts conclusions on the States parties reviewed under this procedure; in the past, such conclusions have tended to be general in nature, but on one recent occasion CERD adopted detailed conclusions comparable to those adopted on reports submitted and examined under the normal reporting procedure.[47]

121. CESCR schedules one non-reporting State at each session. It publicly identifies the country in advance and invites NGOs, United Nations agencies and intergovernmental organizations to submit information about that country as it would with reporting States. On the basis of all reliable information available to it, the Committee proceeds to adopt full concluding observations containing an invitation to submit a report, which, when submitted, would be examined at a subsequent session in accordance with the normal procedures of the Committee.

122. The rules of procedure of HRC as amended in 2001 now provide for the possibility of examining the situation of States parties whose reports are long overdue in the absence of a report.[48] As is the practice of CESCR, the examination of country situations would be undertaken on the basis of information available from a variety of sources, whereupon HRC will adopt "preliminary concluding observations" that will be sent to the State party for the latter's

views, along with an invitation to submit a report. The "preliminary concluding observations" will be sent only to the State party; they will not be issued as public documents. If no report or comments are forthcoming, the Committee will review the preliminary concluding observations at the following session with a view to adopting final concluding observations, to be publicly released. If a report is received, it would be examined according to the normal procedures of the Committee and final concluding observations would be issued thereon. In addition, HRC designates individual members at most sessions to meet in private with representatives of States parties with long-overdue reports, for the purpose of drawing the attention of the concerned Government to its reporting obligations and of conveying the concern of the Committee in that regard.

123. CEDAW has never considered a report in the absence of a delegation. Discussion on the idea has taken place but has been inconclusive. However, the Committee may revisit the question, particularly in light of the fact that its backlog of reports is now almost cleared. CEDAW tracks all States parties whose reports are overdue and maintains a list of those States parties whose reports have been overdue for five years or more. This list appears in a report prepared by the secretariat for each session on ways and means of improving the work of the Committee and the sessional and annual reports of CEDAW. As with HRC, bilateral meetings are held with representatives of States parties with long-overdue reports, with a view to encouraging the submission of the overdue reports.

Option 21. Examine States parties with long-overdue reports without a report

124. The examination by some treaty bodies of situations of States parties whose reports are long overdue in the absence of a report may be viewed as a way to put into practice the principle of equal treatment of States parties. Those that fail to produce a report would not be spared from the public scrutiny that faces those States parties that regularly comply with their reporting obligations.

125. In practice, the procedures developed by CERD and CESCR have had mixed but encouraging results. While recalcitrant non-reporting States remain so even when they are examined without a report, the procedure has educed a reaction from a number of States and other relevant actors. Of the 13 States parties with seriously overdue reports that CERD decided to review in 2000 and 2001, the review of 3 States was postponed at the request of the concerned States, which indicated that they would submit a report shortly, and the review of 6 States led to the subsequent submission of the requested reports. The procedure of CESCR has on one occasion led to the formulation of a project under the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights aimed at assisting the concerned Government with the preparation of a report. The HRC procedure has also resulted in a project under the aforementioned Voluntary Fund for Technical Cooperation. The procedures of CERD and CESCR differ significantly in terms of the depth in which they examine the situations in States parties with overdue reports, although CERD might be moving towards adopting fuller conclusions on countries under its review procedure. The depth of examination has direct implications for the work involved in the preparations, the amount of meeting time necessary to carry out the examination, and the level of specificity of the recommendations that are ultimately adopted, which may affect the resulting impact on the concerned State party.

126. CRC sends letters to States parties, which have not submitted an initial report after 10 years, inviting them to do so within one year. If this is not done, CRC then proceeds with the consideration of the State party concerned without a report.

Option 22. Appoint members to meet with representatives of States parties with long-overdue reports

127. This option follows the practices of HRC and CEDAW, even though the success rate of the experience of these committees has been mixed. Among the benefits of this practice are that it creates an additional occasion to explain to representatives of Governments with a poor reporting history about the reporting process, their legal obligation to report and the value of reporting. It also confirms to those Governments that their failure to report is being scrutinized by the committee concerned. Its main disadvantage is the creation of an additional task for committee members, whose schedules outside the formal meeting time are normally already largely occupied with committee-related activities.

Option 23. Appoint a special rapporteur on input or on overdue reports

128. Such meetings with representatives of States parties with long-overdue reports could be undertaken by a focal point nominated within each committee from among the members. The focal point could be entrusted to monitor the submission of reports, with the aim of encouraging States parties with long-overdue reports to submit their reports.[49] Having identified those States parties with the longest outstanding reports, the designated member should meet as appropriate with representatives of those Governments concerning their failure to report, write accounts of the meetings for inclusion in the annual reports of the committee, recommend the States parties to which the committee should send targeted invitations to appear before the committee in public session for the purpose of discussing the failure to report, reasons for the delay, and possible actions to be taken. Failure by such means to elicit a report could be considered as the precursor to option 18.

Notes

[1] Rule 51 of the CEDAW rules of procedure, (HRI/GEN/3), chap. IV.

[2] Official Records of the General Assembly, fifty-sixth session (A/56/18), chap. IX, para. 477.

[3] Ibid., fifty-fifth session (A/55/38), part two, chap. I, sect. A, decision 23/II.

[4] Decision on methods of work adopted by the Committee at its twenty-ninth session in January 2002, (see future CRC/C/114).

[5] Ibid.

[6] See HRI/GEN/2/Rev.1, chap III, para. B.2, with respect to the practice of HRC; the following paragraph of the present document outlines the practice of CESCR.

[7] Official Records of the Economic and Social Council, Supplement No. 2 (E/2001/22-E/C.12/2000/21), chap. VII, para. 637.

[8] At its twenty-sixth and twenty-seventh sessions, held in August and November 2001, respectively, CESCR requested Panama to submit its next periodic report within three years (E/C.12/1/Add.64, para. 43), Senegal in two years (E/C.12/1/Add.62, para. 62), Israel in two years (E/C.12/1/Add.69, para. 16) and Jamaica in two years (E/C.12/1/Add.75, para. 34). At its seventy-second and seventy-third sessions, held in July and November 2001, respectively, HRC requested the Czech Republic to submit its next periodic report in four years (CCPR/CO/72/CZE, para. 27), as it did with Azerbaijan (CCPR/CO/73/AZE, para. 27), Ukraine (CCPR/CO/73/UKR, para. 26) and Guatemala (CCPR/CO/72/GTM, para. 31). The Democratic People's Republic of Korea was requested to submit its next report in three years (CCPR/CO/72/PRK, para. 30).

[9] The UN Human Rights Treaty System: Universality at the Crossroads, April 2001.

[10] "Enhancing the long-term effectiveness of the United Nations human rights treaty system" (E/CN.4/1997/74), March 1997.

[11] In the case of CEDAW, the Rapporteur of the Committee fulfils this function.

[12] See Official Records of the General Assembly, Fifty-first Session (A/51/18), chap. IX, para. 596.

[13] In the most recent annual reports of CERD and CAT, the names of country rapporteurs are listed in annex V (A/56/18) and annex VI (A/56/44), respectively.

[14] Some treaty bodies have undertaken visits to countries whose reports are due to be examined, at the invitation of Governments or NGOs, but this is the exception rather than the rule.

[15] The main international or "umbrella" NGOs working with the treaty bodies are: Habitat International (CESCR), International Federation of Human Rights Leagues and Lawyers' Committee for Human Rights (HRC), Anti-Racism Information Service (CERD), World Organization against Torture and Association for the Prevention of Torture (CAT), International Women's Rights Action Watch and International Women's Rights Action Watch - Asia/Pacific (CEDAW), and the NGO Group for the Convention on the Rights of the Child (CRC). In addition, the International Service for Human Rights facilitates NGO inputs for several treaty bodies.

[16] Although coordinated submissions are encouraged by all treaty bodies in practice, only CESCR has formally articulated this (E/C.12/2000/6, para. 6).

[17] "Participation of non-governmental organizations in the activities of the Committee on Economic, Social and Cultural Rights: note by the secretariat" (E/C.12/2000/6), and "Guidelines for the participation of partners (NGOs and individual experts) in the pre-sessional working group of the Committee on the Rights of the Child" (CRC/C/90, annex VIII).

[18] E/C.12/2000/6, para. 9.

[19] CRC/C/90, chap. VIII, para. 2.

[20] At its twenty-fourth session, CAT decided to pursue the establishment of a pre-sessional working group (A/56/44, para. 14) and the General Assembly authorized it in resolution 56/143 (para. 13). The first pre-sessional working group will be convened in conjunction with the April 2002 session of the Committee. At present, it is foreseen that the working group will be devoted exclusively to the examination of communications.

[21] For example, see CCPR/C/SR.1963, para. 29, in respect of additional information submitted by the United Kingdom of Great Britain and Northern Ireland.

[22] E/2001/L.8, para. 19.

[23] Ibid, para. 20.

[24] CRC/C/33, para. 15.

[25] E/2001/L.8, paras. 25-30.

[26] These are: (1) general measures of implementation; (2) definition of the child; (3) general principles of the Convention; (4) civil rights and freedoms; (5) family environment and alternative care; (6) basic health and welfare; (7) education, leisure and cultural activities; and (8) special protection measures.

[27] A working paper (CCPR/C/74/CRP.1) before HRC at its March 2002 session explores this possibility.

[28] Although the working languages of any committee may be any combination of the six working languages of the United Nations, all drafting is done in English, French or Spanish. All the current members of CRC are able to work in English, and therefore the availability of documents in the language versions is not an issue for this committee at present.

[29] Concluding observations are also translated at this stage into the official United Nations language of the State party when it is not one of the working languages of the Committee (i.e. Arabic, Russian or Chinese).

[30] In the case of CRC.

[31] The Economic and Social Council, in the case of CESCR.

[32] For example: CRC/C/15/Add.175, para. 35; CRC/C/15/Add.169, para. 5; E/C.12/2001/Add.71, para. 5; E/C.12/2001/Add.73, para. 20.

[33] For example, E/C.12/1/Add.73, para. 15.

[34] See paragraph 76 of the present document.

[35] For a detailed outline of the process, see paragraph 82 of the present document.

[36] CERD's most recent annual report reproduces comments received from Japan and Viet Nam (A/56/18, annex VII).

[37] Recent examples include the comments of the Government of Tunisia, which in the 1999 annual report to the General Assembly (A/54/44, para. 105) follow the Committee's concluding observations.

[38] In its annual report submitted to the General Assembly in 2001, for example, the Human Rights Committee acknowledged receipt of comments from Trinidad and Tobago and the Syrian Arab Republic (A/56/40, vol. I, para. 55). It published such comments as separate addenda to the relevant concluding observations.

[39] CRC/C/4 or HRI/GEN/3, chap. VI.

[40] See, for example, the note from the Government of Iraq, November 1998 (A/55/41, annex IV).

[41] See, for example, CRC/C/111, para. 20, referring to a note verbale from the Government of Latvia concerning the concluding observations.

[42] Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 38 (A/54/38/Rev.1), chap. I, sect. A.

[43] Ibid. Annex VII indicates that during the period 1 January to 15 August 1999, Greece, Mexico and China submitted observations on concluding comments.

[44] See Official Records of the Economic and Social Council, op. cit., para. 42.

[45] Official Records of the General Assembly, Fifty-first Session, Supplement No. 18 (A/51/18), chap. IX, paras. 604-605.

[46] See ibid., Fifty-sixth Session (A/56/18), chap. VII, paras. 467-469.

[47] Ibid., paras. 429-443.

[48] Rule 69.A of the rules of procedure of HRC (HRI/GEN/3, chap. II).

[49] Bayefsky, op. cit., recommendation in sect. II.2, entitled "Overdue reports".